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SERVICE DATE - APRIL 12, 2004

SURFACE TRANSPORTATION BOARD
Washington, DC 20423-0001

Docket No. AB-167 (Sub-No. 1095X)

**Consolidated Rail Corporation – Abandonment Exemption –
Lancaster and Chester Counties, PA**

NOTICE TO THE PARTIES:

In Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Bd., 252 F.3d 246 (3rd Cir. 2001) (FAST), the United States Court of Appeals for the Third Circuit vacated and remanded to the Surface Transportation Board (Board) a case involving the agency's historic preservation review of a proposal to abandon 66.5 miles of track called the Enola Branch in Lancaster and Chester Counties, PA. Pursuant to the court's remand, the Board's Section of Environmental Analysis (SEA) reinitiated the historic preservation review process for Consolidated Rail Corporation's (Conrail) proposed abandonment exemption, pursuant to Section 106 of the National Historic Preservation Act (NHPA).

Under Section 106 of the NHPA, Federal agencies are required to consider the adverse effects of their decisions on historic properties. The entire Enola Branch was determined to be historic by the Keeper of the National Register of Historic Places. See Determinations of Eligibility for Inclusion Under the National Register of Historic Places, 36 CFR 63. Accordingly, the Board must consider the adverse effects of its decision on the Enola Branch, before authorizing the abandonment. The Section 106 process contains three phases: 1) Identification, 2) Assessment, and 3) Mitigation. SEA has completed the first two and is approaching completion of the Mitigation Phase, during which the agency determines what conditions, if any, should be imposed to avoid, minimize, or mitigate adverse effects on the historic properties.

As part of its effort to determine appropriate mitigation measures, SEA issued a Notice to the Parties on October 24, 2002, which set forth the background of the case, described the Board's reinitiation of the Section 106 process, and solicited comments. On October 20, 2003, SEA issued a Notice to the Parties (October 2003 Notice), which included a Draft Memorandum of Agreement (Draft MOA), and on November 19, 2003, SEA held two public meetings in Quarryville, PA. Although the main purpose of these meetings was to accept public comment on the Draft MOA and October 2003 Notice, SEA also heard from many commenters interested in the conversion of the right-of-way (ROW) to a trail.

After careful consideration of all comments received, SEA formulated a Final Memorandum of Agreement (Final MOA). SEA completed the Final MOA after consultation with the Pennsylvania Historical and Museum Commission (the State Historic Preservation Office or SHPO), the Advisory Council on Historic Preservation (ACHP), Norfolk Southern Railway Company (NS), and other consulting parties, with input from the public. If agreed upon, the signatory and concurring parties will sign the Final MOA, and historic review will be complete in accordance with the NHPA and the court's decision.¹ Thereafter, the Section 106 condition imposed in this case will be removed, because the Section 106 process will be complete. If no agreement on the Final MOA can be reached, the Board may terminate the consultation, but it must request and take into account the ACHP's formal comments prior to doing so and issuing a final decision. See 36 CFR 800.6(c)(8); 800.7(c)(4). Once the Section 106 process is complete, the Board will issue a final decision removing the Section 106 condition. In that decision, the Board, if appropriate, may authorize the railroad to fully abandon the rail line.

The purpose of the current Notice is to: 1) summarize and respond to oral and written comments received in response to the October 2003 Notice and Draft MOA, including those that favor converting this railroad ROW to a trail, and 2) present the Final MOA to the consulting parties and the public.

Description of the Line

The Enola Branch extends across Lancaster County, PA, from approximately milepost 27 (1 mile east of Safe Harbor, at the confluence of Conestoga Creek with the Susquehanna River) easterly to the Chester County, PA, line at milepost 4.03. A short portion of the Enola Branch (between mileposts 4.03 and 0.0) lies in Chester County. The Enola Branch passes through the Townships of West Sadsbury, Sadsbury, Bart, Eden, Providence, Martic and Conestoga, and the Borough of Quarryville.

Most of the line borders agricultural land and undeveloped woodland, and the remainder traverses residential and commercial areas in Quarryville. There has been no train service since 1988, and the rails and cross ties have been removed. Amtrak owns and uses above-ground, electric power transmission lines that extend along the Enola Branch from the power plant at Safe Harbor, PA, near Milepost 28.3, to Parkesburg, PA, at Milepost 0.0, where it joins Amtrak's electrified Harrisburg-Philadelphia main line.² These high power transmission lines consist of metal poles supporting two 138 kilovolt transmission lines, with a static or ground wire at the top. The ROW is subject to an easement

¹ Under the ACHP's regulations for implementing the Section 106 process at 36 CFR 800.6, the concurrence of the consulting parties in the final outcome of the Section 106 process is not required.

² According to NS, the bridge over Conestoga Creek at Safe Harbor is at approximately Mileposts 27.3-27.7 but the Amtrak power line easement extends to approximately 28.3.

allowing Amtrak to enter the property to repair and maintain these power lines and related electric power transmission facilities.

Explanation of Trails Use

Based on the oral and written comments submitted in response to the October 2003 Notice, it is clear that there is substantial community support for converting the ROW into a recreational trail. For this reason, SEA provides here an explanation of the Board's procedures for establishing interim trail use and rail banking on a rail line proposed for abandonment.

There are two ways to create a trail. First, Section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d), encourages interested parties to negotiate voluntary agreements to use railroad ROWs that otherwise would be abandoned for recreational trails. The Act preserves railroad ROWs for future railroad use ("rail banking") while allowing the property to be used in the interim as a trail. See Preseault v. ICC, 494 U.S. 1 (1990) (Preseault). As explained in the October 2003 Notice, any agreement for trail use under Section 8(d) must be entered into outside of the Section 106 process and development of the MOA. Second, a trail-use arrangement may also be reached by private agreement of the parties after an abandonment is authorized and consummated, or fully exercised, at which time the property is no longer a part of the national transportation system or subject to the Board's jurisdiction.

Under Section 8(d) of the Trails Act and the Board's regulations at 49 CFR 1152.29, a state or local government or private organization can request a trail condition (known as a Notice of Interim Trail Use or NITU) to begin the trail-use process for this line. To invoke the Trails Act, a prospective trail sponsor need only file a request with the Board and a statement of willingness to assume responsibility for management of the ROW, for legal liability arising out of its use, and for payment of taxes, as well as an acknowledgment that interim trail use is subject to "restoration or reconstruction of rail service." 49 CFR 1152.29(a), (d). Nothing else is required at this stage in the process.

However, a trail sponsor must make a request for trails use under Section 8(d) of the Trails Act before the abandonment is consummated. As soon as this proceeding's historic review is complete, the Board may issue a final decision granting abandonment, and the railroad may thereafter consummate the abandonment. Once it is consummated, the Board loses its jurisdiction to impose a NITU. Preseault, 494 U.S. at 5 n3; see Becker v. Surface Transp. Bd., 132 F.3d. 60 (D.C. Cir. 1997) (Becker).

SEA has heard considerable support for a recreational trail in this proceeding, and Lancaster County recently submitted a formal request for the issuance of a NITU. By letter filed March 23, 2004, NS stated that it is not willing to negotiate with Lancaster County for interim trail use and reiterated that it wants to avoid further delay in concluding this proceeding and conveying the property to the Townships. See NS's December 3, 2003 Response to the Draft MOA at 33-5. Interim trail-use negotiations under the Trails Act are voluntary, National Wildlife Fed'n v. ICC, 850 F.2d 694,

700 (D.C. Cir. 1988) (National Wildlife), so that the Board can neither impose a trail-use agreement upon unwilling parties, nor prevent parties from entering such an arrangement. Therefore, NS is under no obligation either to negotiate, or enter into, a railbanking/interim trail-use arrangement under Section 8(d).³ Thus, despite the demonstrated interest in a recreational trail, the Board cannot issue a NITU in these circumstances,⁴ and NS is free to transfer all or part of the ROW to a trail sponsor under a private agreement, or abandon the line entirely, once the Board issues a final decision removing the Section 106 condition and authorizing abandonment, the abandonment authority becomes effective, and abandonment is consummated.

Assuming that there is no trail-use agreement under the Trails Act, the railroad ROW will be conveyed to the Townships when the Section 106 process is complete and all the steps mentioned above occur. Although the ROW still could be converted to a recreational trail after abandonment is consummated and the land is transferred to the Townships, this would not involve the Board. NS has maintained the position that it would not reject a reasonable and specific offer from a single government entity or responsible party, such as Lancaster County, to take over the duties and obligations of the Townships in the Settlement Agreement,⁵ provided that all Townships promptly agree to the substitution of the party and the Pennsylvania PUC and Pennsylvania Department of Transportation approve it.⁶ See NS Response at 18 n.16, 35. SEA notes that if the property were conveyed to a single party, this could facilitate the creation of a trail.

³ See 49 CFR 1152.29(b)(1); National Wildlife, 850 F.2d at 696; Connecticut Trust for Historic Preservation v. ICC, 841 F.2d 479, 482-483 (2d Cir. 1988).

⁴ See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

⁵ Conrail entered into an agreement with the Townships of West Sadsbury, Sadsbury, Eden, Bart, Providence, Martic, and Conestoga. Pursuant to the Settlement Agreement, Conrail would convey segments of the abandoned line to the respective Townships in which each segment is located; the Townships would assume ownership and future maintenance responsibility for the line and crossing structures; Conrail would contribute an agreed sum of money to the Townships for future maintenance of crossing structures that are to remain in place; and other crossing structures deemed serious highway safety hazards would be removed by either Conrail or a specified Township. Conrail entered into a similar settlement agreement with PennDOT. See PUC Docket Nos. A-00111016 and C-00913256, Board of Supervisors of Bart Township v. Consolidated Rail Corporation, Pennsylvania Department of Transportation, and Lancaster County, et al., October 9, 1997.

⁶ NS stipulated that such a substitution should not result in extra liability, expense, conditions, or responsibilities for NS, Pennsylvania Lines LLC, or Conrail, and should protect Amtrak's electric power transmission line and easement to the same extent as required of the Townships in the Settlement Agreement.

COMMENT SUMMARIES AND RESPONSES

On November 19, 2003 SEA held two public meetings at the Solanco Fairgrounds in Quarryville, Pennsylvania to solicit oral and written public comments on the Draft MOA and October 2003 Notice. At each meeting, SEA outlined its responsibilities under Section 106 and announced that, although trail use was not a subject of the meeting, SEA would entertain all comments. SEA had all oral comments recorded by a court reporter to ensure accuracy. Approximately 78 people signed in at the 3:00 p.m. meeting, and about 83 at the 6:00 p.m. meeting. Around 200 attended these meetings, including elected officials, organization representatives, and private citizens, and SEA received 84 oral comments.⁷

SEA accepted more than 30 written comments from elected officials, organizations, agencies, companies, and private citizens⁸ by the close of the Draft MOA comment period on December 3, 2003. All comments, both oral and written, are summarized below. Comments that addressed similar or identical topics are grouped together, followed by SEA's response. Each response clarifies or corrects information on the Draft MOA, explains and communicates government policy or regulations, directs commenters to appropriate governmental authorities and resources, or simply answers the question. If the comment resulted in a change in the MOA, this is indicated at the end of SEA's response. SEA points out that the Final MOA set forth below also reflects other clarifying changes.

A. Possible Conversion of the Line to a Trail.

Comment A1. A substantial number of commenters expressed an interest in converting the line to a multi-use trail.⁹

- Some offered to assist in the design, maintenance, and financing or fund-raising for a trail.
- Some emphasized positive personal experiences using trails, and suggested that successful trails such as the C&O Canal, Pennsylvania Railroad Schuylkill Division, York Heritage Rail Trail, Conewago Trail, Lititz-Warwick Trail, Lancaster Junction Rail Trail, Laurel Highlands Rail Trail, and Turkey Hill Ridge Trail be used as models for one on the Enola Branch.
- A commenter asserted that dividing the line into segments destroys its potential as a major connecting trail.
- One commenter suggested that any concept for the creation of a trail should be connected in some way to the Underground Railroad, for commemoration and preservation purposes.

⁷ The number of speakers is estimated because some speakers spoke a second time at the close of the meetings.

⁸ SEA accepted comments during and after the close of the Draft MOA comment period.

⁹ Friends of the Atglen-Susquehanna Trail (FAST) submitted a petition signed by approximately 10,000 people in favor of converting the line to a trail.

Comment A2. NS asserted that the Board cannot require it to convert the property to a trail, to convey the line to a third party for trail use, or to make future trail use a condition either to satisfying the Section 106 process or to granting the abandonment exemption. NS further stated that possible trail use of the line should not be included in an MOA providing for historical documentation.

Response to A1-A2. Questions of whether and how this ROW should be used as a trail are outside the Board's jurisdiction. As explained above, interim trail use on this ROW must be voluntary. Moreover, under the statute and the Board's Trails Act regulations (49 CFR 1152.29), the Board has no involvement in the parties' negotiations, nor does it analyze, approve, or set the terms of trail-use agreements. The Board is not authorized to regulate activities on the trail, and it has no authority to deny trail use requests if the statute has been properly invoked and the railroad has consented to negotiate. The Enola Branch's possible interim trail use/railbanking is not a factor in the Board's review of the railroad's request for final authority to salvage the line, nor is it part of the Section 106 process.

Comment A3. Commenters asked whether, upon abandonment, it is still possible to use the ROW as a trail. Some advised against abandoning the ROW, because once it is broken up, the "trail" is permanently lost. Others state that the MOA would not preclude trail use because municipalities may later implement whatever project their constituents want.

Response to A3. Once abandonment of a rail ROW is authorized and consummated, the Board loses jurisdiction over the ROW, and state laws and property interests determine whether the property remains available for private negotiations to convert the property into a trail. See Becker, 132 F.3d. at 63. Trails have been established outside of the railbanking system through private agreement.

Comment A4. Commenters asked whether a trail may ever revert back to rail use.

Response to A4. As stated in the October 2003 Notice, every rail ROW that is converted to interim trail use under the Trails Act is banked for future rail use. See Preseault v. ICC, 494 U.S. 1 (1990). That means that the railroad is relieved of its obligation to offer rail service over the line, but it (or any approved rail-service provider) may reassert control to restore active rail service later. See Birt v. STB, 90 F.3d 580, 583 (D.C. Cir. 1996); Iowa Power-Const. Exempt-Council Bluffs, IA, 8 I.C.C.2d 858, 866-67 (1990) (Iowa Power). Thus, interim trail use may be cut off at any time by reinstitution of rail service on all or part of the property. 16 U.S.C. 1247(d); 49 CFR 1152.29(d)(2)-(3). Accordingly, a trail on this ROW, if established pursuant to the Trails Act, could revert back to rail use.

B. Benefits to the Community.

Comment B1: Recreational Opportunities.

Commenters made the following observations:

- A trail would provide a new recreational resource for a region where population growth and land development have reduced the areas available for recreation.

- Because the ROW is almost flat, it would be ideal for hiking, biking, horseback riding, walking, running, rollerblading, and birdwatching—all accessible to young, old, and physically disabled citizens.
- A trail would provide a safe place to exercise. There are safety concerns with biking or walking on area roads, which are narrow or lack sidewalks or shoulders. The grades on Route 324 can exceed 10 percent, an added danger for bike riders.
- A trail would have educational value, providing a learning environment for Girl Scout and Boy Scout training and badge programs.
- A trail would encourage appreciation for nature and preserve animal and plant habitat.

Comment B2: Health Benefits. Commenters believe that because there are health problems that improve with exercise, a recreational trail could produce physical and mental health benefits.

- Some referred to the Surgeon General's 2002 "Call to Action to Prevent Overweight and Obesity," and medical studies showing that too few people exercise regularly.
- Others asserted that residents of more automobile-oriented communities are more at risk for obesity because such places discourage walking.
- Childhood obesity might be mitigated by a trail that could encourage fitness through outdoor recreation and by making exercise fun.
- Even people with severe cardiac disease or ambulation problems could walk on the minimal grades of the ROW.

Comment B3: Economic Benefits. A trail could bring tourism, generating economic activity when trail users purchased food, supplies, lodging, and fuel. Commenters referred to a National Park Service study and a 1999 survey by the York County Rail Trail Authority to show that trails bring money to communities through which they pass. Not only would a trail foster new businesses, but it could also increase property values, attract fund-raising events such as walk-a-thons, and generally increase the quality of life, without bringing pollution.

Response to B1-B3. Under the Trails Act, the Board does not decide whether interim trail use is desirable for a particular line. The Board cannot impose an interim trail-use arrangement upon an unwilling railroad or a reluctant trail sponsor; such arrangements must be voluntary. National Wildlife, 850 F.2d at 699-702; Washington State Dept. of Game v. ICC, 829 F.2d 877, 881-82 (9th Cir. 1987). The Board's role under the Trails Act is ministerial, and it does not analyze, approve, set terms, or require that parties submit trail-use agreements. See Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001). As long as the statutory rail banking and liability provisions of the statute are met, the terms of trail-use agreements are private contractual matters between railroads and trail sponsors and are beyond the Board's purview. See Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee, and Dougherty Counties, GA, STB Docket No. AB-389 (Sub-No.1X) (STB served May 9, 2003 and Feb. 2, 2004 denying administrative reconsideration).

C. Safety Issues

Comment C1: Safety of Road Crossings.

There are public-safety concerns about road crossings along the ROW and the structural integrity of the stone arches at Route 222 north of Quarryville, and Route 324 in Martic Township.

- It was suggested that both tunnels be removed, and some commenters advocated bringing the Section 106 process to a close as soon as possible to allow correction of this safety issue.
- There are concerns that bridge tunnels on Route 222 and on Route 324 present dangers for modern vehicular traffic. The narrow design and placement of the bridges on the roadway creates problems for school buses, personal vehicles, farm equipment, emergency equipment, and large commercial vehicles. According to the comments, the narrow underpasses have been the site of numerous accidents, including one fatality at the 222 underpass.
- Commenters stated that Pennsylvania Public Utility Commission (PUC) issued an order addressing existing safety issues at crossings.
- Another asserted that the railroad offered to pay each Township and Quarryville a fair sum of money to make each crossing safe.

Response to C1. SEA acknowledges the public-safety concerns expressed, and is working to complete the Section 106 process as expeditiously as possible, pursuant to the relevant regulations and procedures.

Comment C2: “Settlement Agreement” vs. “Memorandum of Agreement”

There is some confusion over the difference between “settlement agreement” and “memorandum of agreement.”

Response to C2. The terms refer to two different documents, and are not interchangeable.

- Under the Settlement Agreement, Conrail would convey segments of the abandoned rail line to the Townships in which they are located. Conveyance would occur after the line is abandoned and the Board has lost jurisdiction over it. Pursuant to the Settlement Agreement approved by the PUC, the railroad would contribute an agreed sum to the Townships for future maintenance of the crossing structures that will remain in place; other crossing structures deemed serious highway safety hazards would be removed.
- The Memorandum of Agreement (MOA) establishes proposed Section 106 mitigation measures that avoid, minimize, or mitigate adverse effects of the agency’s undertaking on historic properties and resources. These mitigation measures were developed by the Board in consultation with the SHPO, ACHP, the railroad, and other interested parties. The Final MOA requires photographic documentation of all historic bridges to meet Pennsylvania’s state standards, and development of a public interpretative display in the form of a 6-8 minute video outlining the Enola Branch’s history, before historic structures are altered or removed.

Comment C3: Stone Arches.

A number of commenters had suggestions regarding the stone arches:

- One alternative to demolition of the stone arches might be to construct stop lights or crossings at a different location.
- A pedestrian walkway or by-pass could replace the stone arches.
- Some commenters opposed a bypass, stating that it would cause disruptions and decrease the property values of adjacent property owners.

Response to C3. Documentation of the stone arches or other historic resources (taking photographs or preparing a history) before they are altered or removed is the only form of nonconsensual mitigation the Board can require. Although the Board has limited authority to protect historic properties, if the consulting parties agree to undertake additional mitigation beyond what the Board may require (such as preservation of a resource), such consensual mitigation can be incorporated in the MOA.

Comment C4: Amtrak's High-Voltage Lines.

Some commenters were concerned with the compatibility of Amtrak's high-voltage lines with use of the ROW as a recreational trail:

- Amtrak's electrical lines, which run above the property, could pose a danger to trail users.
- One commenter asserted that abandonment of the ROW would be impractical because Amtrak must maintain the power lines over it but suggested that Amtrak could continue maintenance if the ROW were converted to a trail.

Response to C4. There appears to be some confusion regarding Amtrak's easement. As explained in the Description of the Line, the ROW is subject to an easement, which allows Amtrak to enter the property to repair and maintain the electric power lines and associated structures. The settlement agreements protect Amtrak's electricity transmission line and easement, and NS has made it clear that any trail agreement must protect Amtrak's easement to the same extent as required by the settlement agreements with the Townships.

Whether the ROW is suitable for trail use is not a factor in the Board's environmental review of the railroad's request to abandon the line, nor is it part of the Section 106 process. See 49 CFR 1105.5(c)(2); Goos v. ICC, 911 F.2d 1283, 1287 (8th Cir. 1990) (Goos). However, to provide information on this issue to interested parties, SEA contacted Amtrak, to see if there was any available information addressing whether the existing power lines could present a safety hazard to potential trail users.

According to Amtrak, there are no underground power lines along the ROW. Amtrak has stated that the existence and maintenance of its above-ground power lines should not be incompatible with public use of the ROW for hiking trails, so long as proper measures are undertaken to prevent trail users from attempting to climb the power poles. If the ROW is converted into a trail, Amtrak suggested that the trail sponsor install barriers near rock outcroppings to prevent access to the

transmission lines, remove climbing rungs from power poles, and install warning signs that read “Danger, High Voltage.”

Comment C5: Hazardous Materials. It was suggested that the ROW may be contaminated by hazardous materials, perhaps released during past train derailments. A commenter was also concerned that a previous owner of the rail line had buried hazardous materials under or near the rail line, suggesting that it may not be suitable for a recreational trail.

Response to C5. In accordance with the National Environmental Policy Act (NEPA), the Board issued an Environmental Assessment (EA) for this abandonment proceeding in 1989, but because the Board’s role under the Trails Act is ministerial, potential trail use does not require an environmental review. See Goos 911 F.2d at 1287; CART v. STB, 267 F.3d 1144 (D.C. Cir. 2001). It is well settled that in conducting an environmental review in abandonment cases, the Board’s role is limited to the anticipated impacts of the abandonment proposal before the agency, such as the likely diversion of traffic to other rail lines or transportation modes and likely disruptive consequences of removing the track and associated structures. Iowa Southern R. Co. - Exemption- Abandonment, 5 I.C.C.2d 496 (1989), *aff’d Goos*. Thus, the Board has no role to play in determining the suitability of the line for interim trail use/railbanking. Moreover, undertaking any further environmental review of this proposal at this point would be beyond the scope of the court’s remand, which only required the Board to reinstitute the Section 106 historic review process under NHPA, 16 U.S.C. 470f. See FAST 252 F.3d 246.

Nevertheless, to provide information on this issue to interested parties, SEA contacted the Pennsylvania Department of Environmental Protection, Environmental Cleanup Division, Southeast Region Office (PA DEP), to see if there was any available information addressing whether there is known history of spills or burial of hazardous materials in Chester County. PA DEP indicated that there is no known history of spills or burial of hazardous materials in Chester County.

At SEA’s request, NS submitted two Phase 1 EAs from 1996, the purpose of which was to determine the likelihood that there are hazardous materials on the ROW, and to characterize the recognized environmental conditions in connection with the property. The reports present the findings and conclusions of a Phase 1 EA performed by ENSR Consulting and Engineering and Acer Engineers & Consultants, Inc. (Acer). According to the reports, there have been at least nine documented train wrecks involving petroleum products and other hazardous materials on the ROW since 1934. Acer’s report concluded that the “potential for environmental liabilities from this property is moderate to high,” and Acer recommended a Phase 2 EA, consisting of soil and groundwater sampling.

Comment C6. Because trash has been dumped along the line, there are concerns about the streams flowing under it. One commenter asked who protects the waterways from pollution.

Response to C6. SEA contacted the PA DEP by phone, and PA DEP stated that there is no history of groundwater contamination in Chester County. If there are concerns about pollution or water quality, citizens should raise these issues with the appropriate Federal, state, or local authorities.

D. Summary of Other Comments and SEA's Response

Comment D1: Liability Issues.

There is confusion over who is liable for injuries arising out of use of a recreational trail. One commenter asserted that the Trails Act protects land owners and trail owners from liability; another stated that the county and state are insured against liability.

Response to D1. Under the Trails Act and the Board's regulations, the trail sponsor would assume full responsibility for the management of the trail, including payment of taxes on, and tort liability for, the property. 16 U.S.C. 1247(d); 49 CFR 1152.29(a)(2).

Comment D2: Trail Patrol and Maintenance Issues.

Commenters raised concerns about vandalism, trash dumping, and noise on the ROW, as well as privacy for adjacent land owners.

- Alleged current problems on the ROW include: four-wheelers, drinking parties, hunters discharging firearms, drug use, and other illegal activities. One commenter raised a concern that trail users could be assaulted if the trail were not adequately policed.
- Commenters asked who would police the ROW, particularly the eastern end, if it becomes a trail. They noted that state police do not have access in order to patrol, and that townships lack resources for a police force. One suggested that park rangers could patrol and provide better management and control of the land.
- Some stated that a well maintained and actively patrolled trail would decrease safety hazards and undesirable behavior. Commenters suggested that volunteers could help maintain the area with the cooperation of the municipalities.
- Another specific concern was that mosquitos carrying the West Nile Virus may breed in tires dumped along the line.

Response to D2. Questions about who would provide security against increased crime on the ROW are beyond the Board's limited Trails Act authority. As stated above, the Board cannot dictate terms of trail-use agreements, regulate trail activities, or determine trail operation conditions. See Central Kansas Railway, Limited Liability Company—Aband. Exemption—In Marion and McPherson Counties, KS, STB Docket No. AB-406 (Sub-No. 6X) (STB served May 8, 2001) (Central Kansas).

The Board also lacks jurisdiction over ROW maintenance following consummation of an abandonment. However, agency precedent makes it clear that, while the Board has no role in trail maintenance issues, maintenance issues may properly be raised with local governments. Nothing in the Board's Trails Act rules or procedures is intended to usurp the right of state or local entities in Pennsylvania to impose appropriate safety, land use, and zoning regulation on trails so long as they are

not applied in a discriminatory manner or so as to preclude interim trail use or reactivation of rail service in the future. See Central Kansas at 5, FN9.

Comment D3: Other Issues.

Commenters questioned whether the views of the community and taxpayers were well-represented at the public meetings held in Quarryville.

- One suggested that a majority of the Amish residents would be opposed to a trail project.
- Another requested that SEA hold a closed meeting with public officials to hear from those who represent residents.
- A commenter questioned whether all options to preserve the line have been considered, suggesting that a commission composed of community members study environmental and land use reports to recommend a use for the line.

Response to D3. Over the course of the Section 106 process, agencies and the public have had ample time to review project information, and there have been several opportunities for the public and agencies to comment during this proceeding. On October 24, 2002, the Board issued a Notice to the Parties that set out the background of the case, described the Board's reinitiation of the Section 106 process, and solicited comments on certain issues. In response, the Board received 18 comment letters, and a letter replying to other parties' comments. SEA responded to these comments in a second Notice to the Parties, which was served on October 20, 2003. At that time, SEA also presented the proposed Draft MOA for public review and comment.

On November 17, 2003, SEA held two public meetings to hear public comments on the Draft MOA, and all attendees had the opportunity to be heard. SEA has also encouraged the public and agencies to submit written comments, and more than 30 have been submitted. SEA has considered all comments, both oral and written, in formulating the Final MOA. In short, there were adequate opportunities for public and agency involvement in this proceeding, and it is now important for the Board to complete the Section 106 process as promptly as possible.

Comment D4: Financial Resources.

A number of comments concerned the financial burden of maintaining a trail:

- Commenters questioned whether the Townships have the financial resources to commit to a trail project, and several recommended that the Lancaster County Parks Division oversee the trail project because it has the expertise and resources for such a project.
- Lancaster County requested time to develop and study budgets and options.
- There are concerns that the costs of cleaning up the ROW and creating and maintaining a trail would be prohibitive, and would be passed on to taxpayers.

Response to D4. As discussed above, the Trails Act would be properly invoked and the requirements for a trail condition met if (1) a prospective trail sponsor files the required statement of willingness and agrees to railbanking and (2) the railroad voluntarily agrees to negotiate a Trails Act

arrangement. The Board's only responsibility is to confirm that the trail sponsor agrees to assume full liability for the property during the interim trail use and to keep the property available for reactivation of rail service. 16 U.S.C. 1247(d); 49 CFR 1152.29(a)(3).

The Board does not require that a trail proponent provide detailed financial information or pass a fitness test before it issues a trail condition because the railroad may protect itself merely by refusing to consent to the issuance of the trail condition. See Jost v. STB, 194 F.3d 79 (D.C. Cir. 1999); Idaho Northern & Pacific Railroad Company—Abandonment and Discontinuance—in Washington and Adams Counties, ID, STB Docket No. AB-33 (Sub-No. 100X) et al. Presumably, a railroad would not negotiate with a prospective trail sponsor unless it believed the sponsor could manage the ROW, assume legal liability, and pay the taxes. The Board appropriately defers to the railroad's decision whether or not to negotiate a Trails Act arrangement.

E. Comments on the Draft Memorandum of Agreement

Comment E1. Several commenters stated their support for the Draft MOA as written and thanked SEA for its efforts to complete the Section 106 process.

Response to E1. SEA acknowledges the comments supporting the Draft MOA as written and its efforts to conclude the Section 106 process.

Comment E2. One comment suggested that SEA take all steps necessary to avoid further delay with respect to the section 106 process.

Response to E2. The court's concern underlying the remand was "less with the substantive results reached by the [Board] on the historic eligibility of the Enola Branch than with the procedures and reasoning the [Board] followed in reaching those results." The NHPA is a "stop, look, and listen" provision, and the court concluded that the Board had not "touched all the procedural bases." FAST, 252 F.3d at 263. Therefore, SEA has dedicated the time necessary to satisfy all aspects of the NHPA as directed by the court in its remand.

Comment E3. One commenter suggested that SEA proactively develop Draft MOA language for a more preservation-focused outcome, requesting that SEA work with the ACHP, the SHPO, and other consulting parties on an agreement that both appropriately documents resources to be removed and places conditions on their salvage. If these steps are not instituted, the commenter believes that SEA will have precluded its responsibilities under 36 CFR Part 800.11(e).

The commenter requested that the following measures be included in the MOA: 1) reuse of historic structure materials for commemorative purposes and 2) a requirement that any proposed public overpass to be constructed be consistent with Secretary of the Interior standards for new construction of bridges or structures in or around sites of National Historic Significance. The commenter also

explained that the line has a connection to the heritage of the Underground Railroad and requested that this new historical information be included as part of any documentation.

Comment E4. NS stated that the Underground Railroad is not connected to the history of the line, because it was not constructed until 1903 - 1906. See NS Response to the Draft MOA, at 30, n25.

Response to E3-E4. In developing mitigation, the Board cannot deny a railroad the authority to take action otherwise meeting relevant statutory criteria solely because it would adversely affect historic resources. Moreover, the Board cannot force the railroad to sell or donate its property, or impose a restrictive covenant upon the deed. Appropriate documentation of historic resources (photographing or preparing a history) before they are altered or removed is the only mitigation the Board can require without the railroad's consent. However, if consulting parties agree to mitigation beyond what the Board may require, such as preservation of a resource, that consensual mitigation can be incorporated in the MOA.

The Draft MOA was prepared in consultation with the ACHP, the Pennsylvania SHPO, and NS. However, SEA has amended the Draft MOA to include the following stipulation: "Should it be determined that any of the historic bridges must be dismantled, NS shall consult with the FPO [Federal Preservation Officer], SHPO, and the consulting parties regarding the potential for any re-use of the historic materials for commemoration of the Enola Branch Rail Line." Regarding the commenter's statement that there is a connection between the line and the Underground Railroad, SEA believes that the terms of the Final MOA under I.C.2. are sufficiently broad to document this information if it is appropriate.

Comment E5. One commenter notes that during the public meeting on November 19, 2003, a speaker asked that the Lancaster County be included as a Concurring Party to the MOA.

Response to E5. In response to this request, SEA invited Lancaster County to participate in the MOA process as a Concurring Party in a letter dated December 30, 2003.

Comment E6. One commenter states that the section of the Draft MOA discussing "Post Review Discovery" should include the "full range of historic and cultural resources."

Response to E6. The Draft MOA has been amended to reflect this change.

Comment E7. The Delaware Tribe of Indians stated that its review found no religious or culturally significant sites on the land in question.

Response to E7. SEA thanks the Delaware Tribe of Indians for this information relating to their ancestral ties to the land in question, which assists the Board in completing the Section 106 process.

Comment E8. NS requested that it retain the option to hire the consultant of its choice as it moves forward to complete its obligations under Section 106.

Response to E8. The Applicant has the right to choose a consultant from the SHPO's list of approved consultants.

Comment E9. NS stated that documentation of some portions of the rail line has been completed.

Response to E9. SEA acknowledges that some portions of the rail line were documented several years ago. However, as agreed to by the signatories and explained in Stipulation 1 to the MOA, the SHPO will evaluate the current level of documentation and recommend additional documentation as required to satisfy Section 106.

Comment E10. NS states that the actual length of the rail line right-of-way is 32.6 miles, not 33.9 miles, as stated in the October 2003 Notice. Conrail's notice of exemption for abandonment was for two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 to Milepost 33.7 and Track number 2 extended 33.9 miles from Milepost 0.0 to Milepost 33.9. Thus, according to NS, Conrail intended to retain trackage for active use from Milepost 0.0 to Milepost 1.1 and from Milepost 33.7 to Milepost 33.9 on Track number 1. Moreover, Conrail continued to operate Track number 1 from milepost 0.0 to milepost 1.1 as the Parkesburg Industrial Track, which NS still currently operates. NS states that since Conrail could have removed the portions of Track number 2 that paralleled the retained portions of Track number 1 without Interstate Commerce Commission (ICC) authority, the abandonment proceeding here is not applicable to the portions of the rail line between Mileposts 0.0 to 1.1 and Mileposts 33.7 to 33.9.

Response to E10. As stated in the October 2003 Notice at page 3, Conrail described the line to be abandoned in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. According to Conrail, Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township. The ICC's October 23, 1989 decision publishing the notice of exemption, as well as subsequent ICC and Board decisions, included the trackage from Milepost 0.0 to Milepost 1.1 and Milepost 33.7 to 33.9 as part of the abandonment proceeding in some form.¹⁰ Thus, this abandonment proceeding encompassed the line between Milepost 0.0 to Milepost 1.1 and Milepost 33.7 to 33.9. NS never sought to dismiss its request for authority to

¹⁰ Either by specifically referring to the mileposts of Track number 1 and Track number 2 or by mistakenly adding both tracks to refer to the right-of-way as 66.5 miles long.

abandon any portion of that track.¹¹ Therefore, as SEA stated in the October 2003 notice, the Section 106 process is applicable to the NS-controlled¹² portions of the line from Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.¹³

Comment E11. NS stated that a comprehensive narrative of the history of the line has been produced by Frederick H. Abendschein in the article “The Atglen and Susquehanna: Lancaster County’s Low Grade,” and NS proposed incorporating this work into the documentation as the narrative. The Keystone, Volume 27, Number 4, Winter 1994, at 10. NS suggested that any significant facts about the line from other sources could be added to the documentation in a supplemental narrative. See NS Response to the Draft MOA at 27.

Response to E11. Under the Stipulations of the Final MOA, NS is required to include a historical narrative (a summary of the history and significance of the property). Incorporation of the Keystone article as the historical narrative, required in Section I.C. of the Final MOA, can be accepted if it is agreed to by the FPO, ACHP, and SHPO.

Date made available to the public: April 12, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

¹¹ NS’s comments do not constitute a formal filing before the Board.

¹² In its comments NS also states that Pennsylvania Lines, LCC (PRR) is the current owner of the line, and NS has an agreement with PRR to lease, operate and manage PRR’s assets. SEA described this agreement in the October 2002 Notice at footnote 7, as well as in the Draft MOA attached to the October 2003 Notice. However, SEA mistakenly referred to NS as the owner of the line in the text of the October 2003 Notice.

¹³ Conrail sold the portion of the line between Milepost 1.5 to Milepost 4.0 to SEPTA in 1996. See October 2003 Notice at 3.

MEMORANDUM OF AGREEMENT
AMONG THE SURFACE TRANSPORTATION BOARD
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
AND
NORFOLK SOUTHERN RAILWAY COMPANY

REGARDING DOCKET No. AB-167 (Sub-No. 1095X)
CONSOLIDATED RAIL CORPORATION
– ABANDONMENT EXEMPTION –
LANCASTER AND CHESTER COUNTIES, PENNSYLVANIA

WHEREAS, in 1989 Consolidated Rail Corporation (Conrail) filed a notice of exemption with the Interstate Commerce Commission (ICC)¹ pursuant to 49 CFR 1152.50 seeking an exemption from the requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad commonly known as the Enola Branch. The Enola Branch extends generally westward from Milepost 0.0 in Parkesburg, Chester County, PA to Milepost 33.9 at Port in Lancaster County, PA.² The Enola Branch passes through the Townships of Sadsbury, Bart, Eden, Providence, Martic, Conestoga, and Manor, and the Borough of Quarryville in Lancaster County, and the Township of West Sadsbury, the Borough of Atglen, and the City of Parkesburg in Chester County;

WHEREAS, the portions of the Enola Branch that are the subject of this Memorandum of Agreement are those between Mileposts 0.0 to 1.5 and Mileposts 4.0 to 33.9.³

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, abolished the ICC and transferred certain rail functions, including the rail line abandonment functions at issue in this case, to the Surface Transportation Board (Board), effective January 1, 1996.

² Conrail described the Enola Branch in its 1989 notice of exemption filing as two parallel tracks of a double tracked line. Track number 1 extended 32.6 miles from Milepost 1.1 in Parkesburg to Milepost 33.7 in Manor Township. Track number 2 extended 33.9 miles from Milepost 0.0 in Parkesburg to Milepost 33.9 in Manor Township.

³ Conrail sold the portion of the Enola Branch from Milepost 1.5 to Milepost 4.0 to the Southeastern Pennsylvania Transportation Authority in 1996. On June 23, 1997, Norfolk Southern Railway Company (NS) and CSX Transportation Inc. sought permission from the Board to acquire
(continued...)

WHEREAS, the ICC issued a decision served February 22, 1990 allowing the abandonment subject to a condition, developed as a result of consultation with the Pennsylvania State Historic Preservation Officer (SHPO), that Conrail take no steps to alter the historic integrity of the bridges—the only properties on the Enola Branch that had been identified as potentially eligible for inclusion on the National Register of Historic Places (National Register)—until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f;

WHEREAS, the purpose of the condition was to allow the ICC to work with consulting parties to develop a plan to avoid, minimize, or mitigate any adverse effects of the abandonment on the bridges. The development of a mitigation plan was held in abeyance, pending negotiations to transfer the Enola Branch for interim trail use/railbanking under 16 U.S.C. 1247(d) (Trails Act) or other public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905). When those negotiations proved unsuccessful,⁴ the agency resumed the NHPA process;

WHEREAS, while the Board's Section of Environmental Analysis (SEA) was working through the steps of the NHPA process, Friends of the Atglen-Susquehanna Trail, Inc. (FAST) filed a petition with the Board to reopen the proceeding and broaden the NHPA condition so that it would apply to the entire Enola Branch;

WHEREAS, the Board denied FAST's request in a decision served October 2, 1997, and FAST filed a petition for reconsideration;

WHEREAS, the Board, in a decision served August 13, 1999, believing that the only part of the NHPA process still open was the development of mitigation for bridges determined to be historic, denied FAST's petition for reconsideration of the 1997 decision and FAST then sought judicial review;

WHEREAS, in Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transportation Bd., 252 F.3d 246 (3rd Cir. 2001), the United States Court of Appeals for the Third Circuit vacated the Board's 1997 and 1999 decisions and remanded the case back to the Board, ruling that the Board had failed to comply fully with the procedural requirements of the NHPA;

³(...continued)

Conrail and to divide its assets between them. On July 23, 1998, the Board approved the Conrail Acquisition. CSX Corp., et al.—Control—Conrail Inc., et al., 3 S.T.B. 196 (1998). The Enola Branch property was allocated to Pennsylvania Line LLC, a subsidiary of Conrail, as part of the Conrail Acquisition transaction. NS operates the Pennsylvania Line LLC allocated assets under an operating agreement approved by the Board. This Memorandum of Agreement pertains to the NS-controlled portions of the Enola Branch.

⁴ The ICC terminated the trail-use negotiation condition with respect to the Enola Branch in a decision served April 19, 1993.

WHEREAS, SEA has reinitiated the Section 106 historic review process pursuant to the court's remand and the procedural provisions of the NHPA including FAST and 13 state and local government entities as consulting parties;

WHEREAS, SEA has consulted with the Advisory Council on Historic Preservation (ACHP), the SHPO, and NS, and in two Notices to the Parties and two public meetings solicited oral and written comments from the consulting parties (all of whom are either invited signatories or concurring parties to this Memorandum of Agreement) and the public regarding possible use of the portions of the Enola Branch that are subject to this Memorandum of Agreement for interim trail use/railbanking. Assuming that no arrangement for interim trail use/railbanking is reached, completion of the mitigation phase of the Section 106 process by execution and implementation of this Memorandum of Agreement is appropriate;

WHEREAS, based on the Keeper of the National Register's 1999 finding that the entire Enola Branch is eligible for inclusion in the National Register, and in consultation with the ACHP and the SHPO, SEA has determined that the entire Enola Branch is eligible for inclusion in the National Register;

WHEREAS, based on consultation with the ACHP and the SHPO and the public comments, SEA has determined that the abandonment at issue here would adversely affect the Enola Branch;

WHEREAS, NS already has paid to the Pennsylvania Railroad Museum \$15,437 to fund an exhibit or video of the history of the Enola Branch;

WHEREAS, based on consultation with the ACHP, the SHPO, and NS, and considering the oral and written comments received from interested and official consulting parties, SEA has devised additional measures to mitigate the adverse effects on the Enola Branch that would be caused by abandonment;

NOW THEREFORE, the Board, the ACHP, the SHPO, and NS agree that, assuming that the Board gives final approval to abandon and there is no agreement for interim trail use/railbanking, abandonment of the Enola Branch shall be subject to the following stipulations to mitigate the effect of the abandonment on historic properties.

STIPULATIONS

The Board shall ensure that the following measures are carried out. The Board may direct NS (and its contractor) to assist in fulfilling these stipulations or may use an independent third-party contractor, working under SEA's supervision, direction, and control, and at NS's expense, to assist in fulfilling these stipulations.

I. ADDITIONAL DOCUMENTATION REQUIREMENTS

NS shall retain a professional historian⁵ to document and conduct archival research of the history of the Enola Branch rail line (including the segments of the Enola Branch from Milepost 0.0 to Milepost 1.5 and Milepost 4.0 to Milepost 33.9 and appropriate representative structures). The documentation shall be completed in accordance with the relevant state standards as specified by the SHPO and outlined in the guidance document titled “How to Complete the Pennsylvania Historic Resource Survey Form.” The historian shall also prepare a written report discussing the methods and results of the archival research.⁶

Prior to the commencement of documentation efforts, the Board, the SHPO, and NS shall work together to develop a list of representative structures on the Enola Branch. Documentation of these structures shall serve to document the historic qualities of the line as a whole.

Upon completion of the documentation and archival research, NS shall consolidate all of the information into one cohesive document and submit the document to the Board’s Federal Preservation Officer (FPO) (the Chief of SEA), the ACHP, and the SHPO for review.

Should it be determined that any of the historic bridges must be dismantled, NS shall consult with the FPO, SHPO, and the consulting parties regarding the potential for any re-use of the historic materials for commemoration of the Enola Branch Rail Line.

As provided in Pennsylvania state standards, the document to be prepared by NS shall include:

- A. A Photo/Site Plan Sheet containing: (1) the historic name of the property; (2) the county; (3) noncolor-coded sketch maps or other noncolor maps showing the location of the rail line; and (4) photographs of the representative structures;
- B. A Data Sheet describing: (1) the rail line, its historic function and current use, (2) the representative structures, including relevant historical and descriptive information such as the

⁵ The professional historian will meet the “Secretary of Interior’s Professional Qualification Standards” as specified in Section 800.2(a)(1). 48 FR 44738-9; see <http://www2.cr.nps.gov/laws/ProfQual83.htm>.

⁶ Archival research conducted from information or records supplied by or available at the railroad, the Pennsylvania Historical and Museum Commission, the Pennsylvania State Archives, the Lancaster County Historical Society, the Southern Lancaster Historical Society, the Chester County Historical Society, the Railroad Museum of Pennsylvania, and the Pennsylvania Railroad Technical and Historical Society (as available) shall satisfy this requirement.

architectural and structural system classifications, the exterior materials, the width, depth, and height measurements, dates of construction and known significant changes or rebuilding, (3) the proposed disposition of the structures after abandonment, and (4) to the extent there is relevant information in railroad or local libraries, museums or archives, the cultural affiliations, associated individuals or events, and names of builders or craftsmen who constructed the rail line;

C. A Narrative Sheet, including a brief physical description of the line (current and historic physical appearances and conditions of the rail line segments and all associated structures) and a historical narrative (a summary of the history and significance of the property);

In addition to the requirements of the Pennsylvania state recordation standards, the document shall also include:

1. A written report describing the methods and results of the archival research; and
2. Copies of any relevant historical documents found pursuant to the archival research, as well as available maps of the rail line in its local context.

The Board's FPO, the ACHP, and the SHPO shall have 30 days to review and comment on the draft document. At the end of the 30 day period, NS shall prepare a final version of the document, taking into consideration any comments received, and submit the final document to the FPO, the ACHP, and the SHPO. NS shall also submit two (2) additional copies of the final document to the SHPO to be archived at the SHPO's office.

II. DISPUTE RESOLUTION

Disagreements over implementation of this Memorandum of Agreement shall be resolved in the following manner:

A. If the SHPO or NS objects in writing to the Board's FPO regarding any action carried out or proposed in implementation of this Memorandum of Agreement, the FPO shall consult with the objecting party to resolve this objection. If after such consultation there is no resolution, then the FPO shall forward all documentation of the objection and attempted resolution to the ACHP, including the FPO's proposed response to the objection. Within 45 days of receipt of this pertinent documentation, the ACHP shall exercise one of the following options:

1. Provide the Board with a staff-level recommendation; or
2. Notify the Board that the objection will be referred for formal comment pursuant to 36 CFR Part 800, and complete the referral.

B. The Board shall take into account any ACHP comments or recommendations in reaching a final decision regarding the objection. The Board's responsibilities related to all undisputed actions under the Memorandum of Agreement shall remain unchanged.

III. POST REVIEW DISCOVERY

If the professional historian retained by NS identifies a potential for unanticipated effects on historic properties, as defined in 800.16(l)(1), during the implementation of this Memorandum of Agreement, NS shall notify the Board's FPO. The FPO shall then consult with the SHPO to determine whether additional mitigation measures are necessary, and if so, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

If one or more archeological sites, additional cultural or historic resources, or human remains are discovered during NS's salvage activities, NS shall immediately cease all work and notify the FPO and any Federally recognized tribe that might attach religious or cultural significance to the site. The FPO shall consult with the SHPO and any such tribe to determine whether additional mitigation measures are necessary, and if so, all signatories shall consult to devise appropriate mitigation measures and amend the Memorandum of Agreement, pursuant to Part IV of this Memorandum of Agreement.

Any additional mitigation developed shall be consistent with the provisions of the Pennsylvania Historic and Museum Commission's Policy on the Treatment of Human Remains adopted March 10, 1993, the Native American Graves Protection and Repatriation Act, and ACHP guidance documents such as the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites*.

IV. AMENDMENT

Any Signatory to this Memorandum of Agreement may request that it be amended, whereupon the parties shall consult to consider the proposed amendment pursuant to 36 CFR Part 800.

V. TERMINATION

A. If the terms of this Memorandum of Agreement have not been implemented within one year of its execution, it shall be considered null and void, unless the parties agree to a written extension of time. In that event, the Board shall notify the parties to this Memorandum of Agreement, and if NS chooses to continue with this undertaking, the Board shall reinitiate review of this undertaking in accordance with 36 CFR Part 800.

B. Any signatory to the Memorandum of Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties shall consult during the period prior to

termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Board shall comply with 36 CFR Part 800.

VI. SCOPE OF AGREEMENT

This Memorandum of Agreement is limited in scope to the abandonment of the sections of the Enola Branch from Milepost 0.0 to 1.5 and Milepost 4.0 to 33.9, and is entered into solely for that purpose. Execution and implementation of this Memorandum of Agreement by the Board, the ACHP, the SHPO, and NS is evidence that the Board has afforded the ACHP an opportunity to comment on the project and its effects on historic properties, has taken into account the effects of the undertaking on those properties, and has, therefore, satisfied its Section 106 responsibilities for this undertaking.

SIGNATORIES:

Advisory Council on Historic Preservation

State Historic Preservation Officer
Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation

Surface Transportation Board

Norfolk Southern Railway Company

CONCURRING PARTIES:

Friends of the Atglen-Susquehanna Trail

Historic Preservation Trust of Lancaster County

Lancaster County

Lancaster County Conservancy

Lancaster Farmland Trust

Northeast Regional Field Office of the Rails-to-Trails Conservancy

Pennsylvania Department of Transportation

Quarryville Borough

Southern End Community Association

Township of Bart

Township of Conestoga

Township of Eden

Township of Martic

Township of Providence

Township of Sadsbury

Township of West Sadsbury